CONTENTS

EMPLOYEES

Ralph D. Mawdsley

Introduction 2
Discrimination in Employment 2
- Race 3
- Religion 4
- Sex 4
- Age 5
- National Origin 6
- Disability 7

Substantive Constitutional Rights 7
- Speech 8
- Association 11
- Privacy 11
- Substantive Due Process 12

Procedural Due Process 13
- Liberty and Property Interests 13
- Aspects of Notice 15
- Aspects of Hearing 16

Dismissal, Nonrenewal, Demotion, and Discipline 17
- Insubordination 18
- Unprofessional Conduct, Unfitness, Willful Neglect of Duty 19
- Immorality 22
- Incompetence 23
- Compliance with School Board Policies and State Statutes 25

Reduction-in-Force and Involuntary Leaves of Absence 29
- Necessity for Reduction-in-Force 29
- Elimination of Position 30
- Selection of Employees 30

Realignment/Reassignment 31
- Call-Back Rights 31

Contract Disputes 32
- Board Policies and Contract Stipulations 32
- Administrative Regulations and Statutory Provisions 35

Tenure 36

Tenure Status 36
Tenure by Default or Acquiescence 37
Certification 38
Decertification, Revocation, or Suspension 39
Conclusion 39

SCHOOL GOVERNANCE
Donald F. Uerling

Introduction 42
State Education Agencies and Officials 42
State Boards of Education 42
State Commissioners of Education 43
State Departments of Education 43
State Funding 44
State Finance Plans 44
Desegregation Plans 46
Allocation of State Funds 46
Special Schools and School Districts 48
Charter Schools 48
Special School Districts 48
Special Schools 48
Special Governance Arrangements 49
School District Boundary Changes 49
School District Board Membership 50
Removal of Board Members 50
Miscellaneous Election Issues 51
School District Board Meetings 54
Open Meetings 54
Miscellaneous Issues 55
Powers of School District Boards 55
School District Financial Affairs 58
Taxing Authority 58
Bonds and Leases 59
Use of Funds 60
School District Employment Affairs 61
Administrators 61
Teachers 63
Support Staff 67
School District Contracts 69
Goods and Services 69

Bidding 70
School District Facilities 72
Student Claims of Mistreatment 75
Sexual Harassment and Abuse 75
Timely Filing of Suits or Claims Against the School District 76
Conclusion 79

PUPILS

William E. Camp, Carrie Y. Ausbrooks,
and Jane B. Huffman

Introduction 81
Issues Relating to Public School Attendance 82
Compulsory Attendance 82
Transfer of Students 83
Tuition and Fees 84
Private and Parochial Students 84
Substantive Rights of Students 85
First Amendment Religious Rights 85
First Amendment Freedom of Speech 88
Sexual Abuse and Harassment By Students 89
Sexual Abuse and Harassment By Employees 90
Privacy 94
Search and Seizure 95
Instructional Issues 98
Other 98
Sanctions for Student Misconduct 100
Generally 100
Suspension and Expulsion 102
Desegregation 107
Desegregation Plan Oversight 107
Cross-district Remedies 109
Conclusion 111

BARGAINING

Julie F. Mead

Introduction 113
Constitutional Issues 113

First Amendment — Freedom of Religion 114
First Amendment — Freedom of Association 115
Contract Clause and Fifth Amendment 116
Recognition and Representational Issues 117
Rights and Obligations of
Exclusive Bargaining Representatives 118
Scope of Bargaining 119
Grievability and Arbitrability 120
Presumption and Arbitrability 120
Procedural Issues 124
Judicial Review of Arbitration Awards 125
Salary and Benefits 125
Dismissal and Nonrenewal 127
Reassignment and Transfer 129
Reduction-in-Force 129
Strikes 130
Miscellaneous 131
Salary and Benefits Issues 131
Other Issues 132
Conclusion 133

STUDENTS WITH DISABILITIES

Allan G. Osborne

Introduction 136
Entitlement to Services 137
Procedural Safeguards 141
Evaluation 141
Rights of Parents or Guardians 142
Development of Individualized Education Programs 143
Change in Placement 144
Dispute Resolution 145
Administrative Hearings 146
Court Proceedings 148
Standing to Sue 149
Statute of Limitations 150
Actions Under Other Statutes 151
Placement 152
Appropriate Educational Placement 153
Least Restrictive Environment 157
Private Facilities 158

Related Services 159
Discipline 160
Remedies 162
Damages 163
Tuition Reimbursement 163
Compensatory Services 165
Attorney Fees 166
State Immunity 168
Other IDEA Issues 168
State Laws 169
California 169
Illinois 169
Kansas 170
Massachusetts 170
New York 170
Rhode Island 171
Discrimination Under the Rehabilitation Act, Section 504 171
Students 172
Elementary and Secondary 172
Higher Education 173
Other Section 504 Issues 174
Americans with Disabilities Act 175
Students 175
Elementary and Secondary 175
Higher Education 176
Conclusion 177

TORTS

William J. Evans, Jr.

Introduction 179
Negligence 180
Injuries 180
Off School Property and After School Hours 180
School Settings During School Hours 181
En Route to and from School 183
In School Buildings and on School Grounds 184
Negligence Defenses 185
Immunity 185
Common Law (Governmental Immunity) 185

Statutory Immunity 187
Other Defenses 190
Comparative Negligence 190
Notice of Claim 190
Educational Malpractice 192
Liability Insurance 192
Employee Injuries 192
Workers' Compensation 193
Defamation/Intentional Infliction of Emotional Distress 195
Constitutional Torts 196
Student Initiated Cases 196
Employee Initiated Cases 200
Conclusion 200

SPORTS

Linda A. Sharp

Introduction 202
Eligibility 202
Longevity 202
Age 203
Core Courses 203
Discipline 204
Right of Nonenrolled Student to Participate 205
Classifications of Schools 206
Drug Testing 206
Postbaccalaureate Bylaw 206
Equality of Programs 207
Gender 207
Torts 208
Intentional 208
Assault and Battery 208
Defamation 209
Wrongful Arrest 209
Negligence 210
Participants 210
Spectators 216
Employment 217
Adverse Employment Decisions 217
Refusal to Renew Coaching Contract 217
Contract Disputes 218

Collective Bargaining 218
Discrimination 218
Gender 218
Civil Rights 219
First Amendment 220
Miscellaneous 220
Criminal 220
Prevailing Wage Act 220
Workers' Compensation 221
Contracts 221
Insurance 222
Open Meetings Act 222
Real Property 222
Conclusion 222

HIGHER EDUCATION

Robert M. Hendrickson

Introduction 226
Intergovernmental Relations 227
Legislative Authority 227
State Authority 228
Board Authority 229
Agency Authority 229
License 231
Accreditation 232
Sunshine Laws 233
Taxation 235
Zoning 236
Eminent Domain 237
Environmental Regulations 237
Jurisdiction 238
Ownership 238
Federal Issues 239
Sovereign Immunity 239
Separation of Church and State 240
Criminal Charges 240
Equal Protection 240
Privacy 241
Employees 241

Title VI 241
Title VII 242
Procedures 242
Burden of Proof 244
Disparate Impact 245
Retaliation 246
Damages 247
The Equal Pay Act 247
Title IX 247
Age Discrimination In Employment 247
Retirement Benefits 248
Burden of Proof 249
Termination 249
Rehabilitation Act of 1973 and Americans with Disabilities Act 250
Hiring Discrimination 252
Nontenured Faculty 253
First Amendment Speech 253
Nonrenewal of Contract 254
Defacto Tenure 254
Breach of Contract 255
Termination During Contract Period 256
First Amendment Rights 257
Discrimination 257
Denial of Tenure 258
Procedural Issues 258
Tenure Review Process 259
Civil Rights Violations 260
First Amendment 260
Title VII 261
Age Discrimination 261
Title IX 262
Part-time Faculty 262
Tenured Faculty 262
Termination for Cause 262
Denial of Employee Privileges 263
All Employees 265
Collective Bargaining 265
Bargaining Unit Designation 265
Unfair Labor Practices 265
Grievance Procedures 266
Breach of Contract 266

Administration and Staff 267
Termination 267
Jurisdiction 267
Procedural Questions 267
Property Rights/Due Process 268
Discrimination 269
Retaliation 271
Hiring 272
Financial Exigency 273
Contract Issues 273
Damages 276
Denial of Employee Benefits 276
Retirement 277
Disability Benefits 278
Life and Health Insurance Coverage 279
Unemployment Compensation 279
Sexual Harassment 280
Title VII Quid Pro Quo Claims 280
Hostile Environment Claims 281
Co-worker Harassment Claims 281
Student Harassment Claims 282
Constitutional Protections 283
Liability 283
Personal Injury 283
Death or Injury 283
Hazing 284
Alcohol 284
Strict Liability 284
Scope of Duty 285
Bodily Injury 286
On Campus 286
Residence Halls or Living Units 287
Off-Campus, Institution-Sponsored or Sanctioned Event 288
Sports Activity 288
In Class 289
Scope of Duty 289
Defamation 290
Breach of Physician/Professional —Patient/Client Relationship 291
Malicious Prosecution 292
Procedures 292
University May be Liable for Old Injuries 293

Workers' Compensation 293
Contract Liability 294
Contract Terms 294
Settlement Agreement 296
Insurance Contracts 296
Bidding 297
Racketeering 297
Contract Liability 298
Strict Liability 299
Damages for Defects 299
Provision of Wages 299
Negligence 300
Medical Malpractice 301
AntiTrust 302
Patents 302
Estates and Wills 305
Conclusion 305

STUDENTS IN HIGHER EDUCATION
Terrence Leas

Introduction 308
Admission or Matriculation 308
Admission 308
Matriculation 309
Tuition and Fees 311
Residency 311
Financial Aid 312
Institutional Eligibility 312
Federal Qualifications 312
State Agency Qualifications 314
Procedures and Qualifications 314
Bankruptcy 317
Chapter 7 317
Chapter 13 318
Chapter 11 319
Service Contracts 319
Collection 319
Child Support 321
Criminal Prosecution 322
Veteran Assistance Benefits 322

Student Organization 322
First Amendment 322
Freedom of Speech 322
Freedom of Assembly 323
Freedom of Religion 323
Freedom of Association 324
Discipline 324
Nonacademic Disciplinary Actions 324
Academic Dismissal 325
Breach of Contract 325
Due Process 326
Racial Discrimination 327
Sexual Harassment 327
Other Constitutional Issues 327
Privacy 327
Federal Statutes 328
Title VI 328
Violence Against Women 328
Title IX 328
Disability Laws 329
Fair Housing Act 330
National Voter Registration Act 331
Conclusion 331

APPENDIX

Table of Cases 335

Cases by Jurisdiction 351

Index 371